



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: H.L. Bouton Company, Inc.

File: B-256014.4

Date: October 24, 1994

Sidney Getz for the protester.
Col. Curt Newill, Department of the Air Force, for the agency.
Henry J. Gorczycki, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation requirement for multiple items of brand-name-or-equal safety eyeglasses and parts "as long as all items are interchangeable" does not unduly restrict competition where the challenged requirement is reasonably related to the agency's minimum needs to make quick and safe repairs to broken glasses while minimizing its inventory and costs.

DECISION

H.L. Bouton Company, Inc. protests the terms of request for proposals (RFP) No. F34650-93-R-0379, issued by the Department of the Air Force for prescription and nonprescription safety eyeglasses and associated spare parts for the Occupational Vision Clinic at Tinker Air Force Base, Oklahoma. Bouton asserts that the solicitation requirements are unduly restrictive of competition.

We deny the protest in part and dismiss it in part.

The RFP, issued as a total small business set-aside, contemplated the award of a firm, fixed-price contract for a base and 4 option years. The RFP initially specified brand-name-only glasses and parts manufactured by U.S. Safety Products and required all-or-none offers.¹

Two protests were subsequently filed by a prospective offeror, Fosta-Tek Optics, Inc., asserting that the requirements for brand-name-only products and

¹The RFP schedule of prices contained 92 contract line item numbers (CLIN) for each year of the possible 5-year term of the contract.

all-or-none offers were unduly restrictive of competition. The Air Force took corrective action on both protests and amended the RFP to permit offers for brand name or equal products "as long as all items are interchangeable,"² and providing for evaluation of offers for multiple awards to permit the submission of offers for less than all of the items solicited.

Bouton, which only supplies nonprescription glasses, protested the amended solicitation, arguing, among other things, that the interchangeability requirement for nonprescription glasses is unduly restrictive of competition. Bouton asserts that the component products of the various manufacturers are not interchangeable with each other, and thus the solicitation effectively restricts competition to U.S. Safety glasses and parts only.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition, and include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 10 U.S.C. § 2305(a)(1) (1988). Contracting agencies have broad discretion in identifying their needs and determining what characteristics will satisfy those needs, and we will not question an agency's determination of its needs so long as that determination is reasonable. Herley Indus., Inc., B-246326, Feb. 28, 1992, 92-1 CPD ¶ 243; Bombardier, Inc., Canadair, Challenger Div., B-243977; B-244560, Aug. 30, 1991, 91-2 CPD ¶ 224. Nor will we object to a requirement based on a particular brand name product as unduly restrictive of competition where the requirement is reasonably related to the agency's minimum needs. Id. Where a protester alleges that the requirements of a solicitation are unduly restrictive, we will review the requirements to ensure that they are reasonably related to the agency's minimum needs. Id.

The agency states that its minimum needs are to quickly and safely repair or replace broken glasses (both prescription and nonprescription), while limiting the size of its inventory to fit in the small storage space available at the optical clinic and minimizing costs. By requiring that the

²The amended RFP stated criteria for evaluating interchangeability, which included standards describing what constitutes an acceptable fit (e.g., "side shields must provide coverage without gaps or spaces between frame front and side shield,") as well as a requirement that offerors submit product samples for 17 specified CLINs to which the agency would apply the stated standards to test for interchangeability.

components of the glasses be interchangeable with the different types of glasses and brands which could be procured, the agency will be able to maintain a small inventory and safely repair broken glasses as they occur by scavenging parts from whatever glasses or parts are in stock regardless of type or brand. If the parts are not interchangeable, such repairs would not be possible unless the specific part and/or brand of glasses is inventoried, thus requiring an expansive inventory and more expense.

Bouton does not challenge the agency's statement that the interchangeability requirement will allow the agency to maintain a small inventory of parts and glasses, but asserts that the agency should not repair the nonprescription glasses. Specifically, Bouton argues that nonprescription glasses are so inexpensive that it would be cheaper for the agency to replace broken nonprescription glasses with a new pair rather than fix them. In response, the agency documented the cost savings that would accrue to the agency if it were to repair nonprescription glasses rather than replace them.³ Bouton does not challenge the agency's data and we have no basis to question the reasonableness of the agency's determination that interchangeability will result in a smaller inventory and result in cost savings.⁴ Thus, Bouton has not shown that the agency lacks a reasonable basis for the interchangeability requirement. See The Entwistle Co., B-248341, Nov. 16, 1992, 92-2 CPD ¶ 349 (requirement that part be repaired rather than competing for new parts is reasonable where it is less expensive to repair); LaBarge Prods., Inc., B-232201, Nov. 23, 1988, 88-2 CPD ¶ 510 (requirement that items be procured on a total package basis to ensure compatibility of parts is reasonable where such a requirement minimizes cost and technical risk).

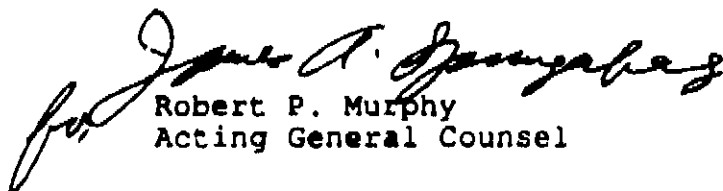
Bouton also states that the components of its glasses are not interchangeable with those of its competitors, and alleges that no competitor's components are interchangeable with other competitor's components. Bouton thus contends that the interchangeability requirement is overly restrictive of competition because it essentially requires all-or-none offers by default. The agency states that while the interchangeability requirement may eliminate from the competition those offerors, whose products are not interchangeable with other brands and which cannot otherwise

³The agency stated that the current cost of a pair of nonprescription glasses is \$3.82 and the cost of a single lens or temple, the most common repairs, are 58 cents and 70 cents, respectively. The time required for repairs is negligible as most repairs take only a few minutes. The total estimated savings per year of repairing rather than replacing nonprescription glasses is \$4,000.

supply all the CLINs solicited, the solicitation is not restricted to all-or-none offers, so that offerors whose products may be interchangeable could submit offers for only a portion of the CLINs.⁴ In any case, assuming that Bouton is correct in asserting that only offerors who can offer on all the CLINs can be assured of meeting the interchangeability requirement, Bouton still has not shown that this requirement is an unreasonable statement of the agency's minimum needs. Even if the interchangeability requirement were to limit competition, this alone does not show that it is overly restrictive of competition where, as here, the challenged requirement is reasonably related to the agency's minimum needs. See Infection Control and Prevention Analysts, Inc., B-238964, July 3, 1990, 90-2 CPD ¶ 7; Bombardier, Inc., Canadair, Challenger Div., supra; LaBarge Prods., Inc., supra.

Bouton challenges other RFP requirements as unduly restrictive of competition. However, since Bouton states that it cannot meet the interchangeability requirement, it cannot submit a technically acceptable proposal and thus it is not a prospective offeror eligible for award under the RFP. Therefore, Bouton is not an interested party under our Bid Protest Regulations, 4 C.F.R. § 21.0 (1994), to protest the other terms of the solicitation.⁵ Bombardier, Inc., Canadair, Challenger Div., supra; LaBarge Prods., Inc., supra.

The protest is denied in part and dismissed in part.


Robert P. Murphy
Acting General Counsel

⁴The agency essentially admits that it does not know whether any components offered by different suppliers are interchangeable with those of another supplier.

⁵We note that the agency reviewed its minimum needs in regard to the protester's other allegations and, to the extent it agrees with these allegations, the agency stated that it will amend the solicitation.